

-DAR 23850

COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT

PLYMOUTH, SS

SJC NO. \_\_\_\_\_  
NO. 2015-P-1348

COMMONWEALTH OF MASSACHUSETTS,  
Appellee

v.

JAIME RESENDE,  
Defendant-Appellant

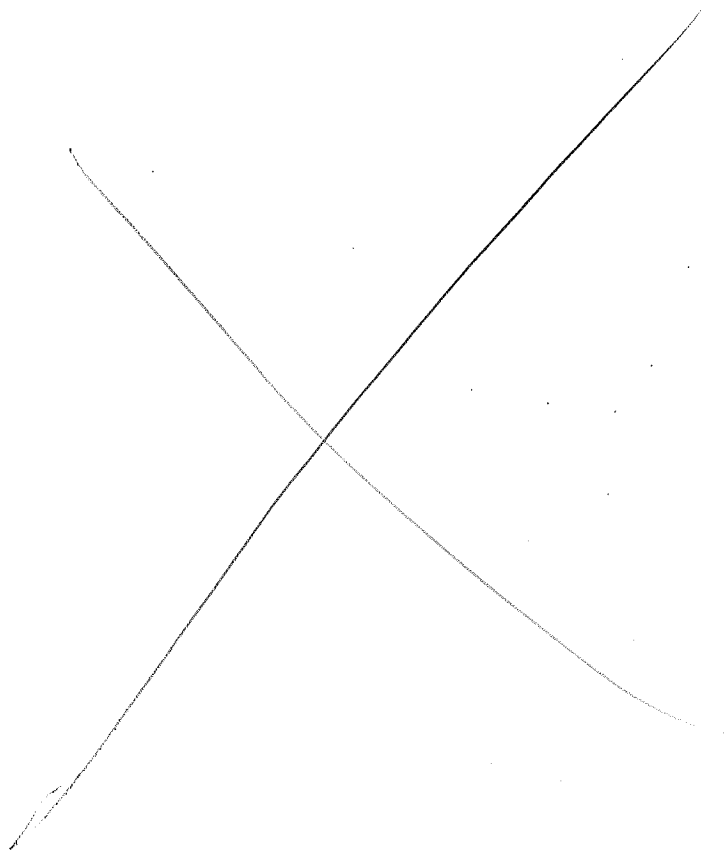
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APPLICATION FOR DIRECT APPELLATE REVIEW

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October 22, 2015



### **REQUEST FOR DIRECT APPELLATE REVIEW**

Pursuant to Rule 11 of the Massachusetts Rules of Appellate Procedure, defendant Jaime Resende requests direct appellate review by this Court of decisions by the Plymouth Superior Court: (1) reinstating defendant's previously-dismissed armed home invasion indictment following his acquittal of felony murder based upon the predicate felony of armed home invasion; and (2) denying defendant's Rule 30(a) motion for release from unlawful restraint on his prior conviction for armed assault with intent to rob following his acquittal of felony murder based upon the equivalent predicate felony of attempted armed robbery.

### **PRIOR PROCEEDINGS**

On September 21, 2007, indictments were returned against defendant, charging him with first degree murder, armed home invasion, and armed assault with intent to rob. His co-defendant Kenston Scott was indicted for murder in the first degree, armed home invasion, and illegal possession of a firearm.

On May 27, 2010, after an eight-day trial ("the first trial"), defendant and Scott were found guilty of first degree felony murder with armed home invasion as the predicate felony, and armed home invasion. In

addition, defendant was found guilty of armed assault with intent to rob, and Scott was found guilty of illegal possession of a firearm. Defendant and Scott were sentenced to life without parole for first degree murder, the armed home invasion indictments were dismissed as duplicative of the felony murder convictions, defendant was sentenced to a concurrent 18-20 years for armed assault with intent to rob, and Scott was sentenced to a concurrent 4-5 years for illegal possession of a firearm.

Defendant and Scott filed notices of appeal to this Court from their convictions, and the appeal was entered on this Court's docket on November 29, 2011. In March, 2012, defendant and Scott filed motions to stay the appeal on the ground that they intended to file motions for a new trial in Plymouth Superior Court. In April, 2012, this Court stayed all appellate proceedings in the case pending the disposition of the defendants' motions for a new trial, which were filed in June 2012, and remanded the motions to the Plymouth Superior Court.

On June 4, 2013, the Plymouth Superior Court (Chin, J.) allowed defendant's and Scott's motions for a new trial with respect to their convictions for first degree murder, and denied the motions to the extent that they

sought a judgment of acquittal on the ground that there had been insufficient evidence of felony murder. The court also denied defendant a new trial on his conviction for the armed assault with intent to rob.<sup>1</sup> See Findings of Fact, Rulings of Law, and Order on Defendant Kenston Scott's Motion for Post-Conviction Relief; and Defendant Jaime Resende's Revised Motion for a New Trial. (Dkt. Entry 109, Add. 10)

On June 28, 2013, defendant filed a notice of appeal in Superior Court "from the Order of the Superior Court, entered on June 4, 2013, to the extent that it denied the relief sought in his Revised Motion for a New Trial." Co-defendant Scott also filed a notice of appeal from the Superior Court's order. However, on or about January 2, 2014, defendant filed in Plymouth Superior Court a Withdrawal of Defendant's Notice of Appeal from the Order of the Superior Court entered on June 4, 2013. Defendant filed a copy of this notice with this Court in a letter dated January 2, 2014, in

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<sup>1</sup> Defendant had argued that he was entitled to a new trial with respect to all of his convictions on the ground that his right to confrontation under Bruton v. United States, 391 U.S. 123 (1968), had been violated by the introduction in evidence, over objection, of a statement of his non-testifying co-defendant, Kenston Scott, which implicated defendant in a plan to rob the victim of drugs and money.

which counsel explained that his intention was to withdraw the appeal to this Court from the order of June 4, 2013. This Court's docket shows that a motion for withdrawal of appeal of defendant was allowed on January 6, 2014. Co-defendant Scott, however, proceeded with his appeal from the order of June 4, 2013.<sup>2</sup>

In withdrawing the appeal from the order of June 4, 2013, denying, in part, defendant's revised motion for a new trial, it was the intention of counsel to go forward with the new trial of the murder indictment that had been allowed. Since co-defendant Scott's appeal from the order allowing his motion for a new trial was pending in this Court, defendant was set to be tried alone on his indictment for first degree murder in February, 2015.

In anticipation of the second trial, the Commonwealth stated its "intention to allege Attempted

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<sup>2</sup> On September 24, 2015, this Court affirmed the Superior Court order denying Scott's request on his motion for post-conviction relief for a finding of not guilty on the charge of murder in the first degree, with armed home invasion as the predicate felony. This Court held that the Superior Court had not erred in its conclusion that "the evidence at trial was sufficient to support a finding that there had been two separate and distinct assaults, and therefore that the felony-murder conviction was not legally deficient under the so-called merger doctrine." Commonwealth v. Scott, SJC No. 11097, slip op. at 4.

Armed Robbery as the felony underlying a theory of first degree murder."<sup>3</sup> Prior to the February, 2015, trial, the Commonwealth notified defendant that it was additionally proceeding on the theory of felony murder with armed home invasion as the predicate offense.<sup>4</sup> The Commonwealth then filed a motion to "reinstate" the armed home invasion conviction which had been dismissed as duplicative of defendant's felony murder conviction, and to permit the admission of a record of that conviction in evidence at the trial. The trial judge declined to rule on this motion, and the Commonwealth filed a petition pursuant to G.L. c. 211, §3, in the Single Justice Session of this Court seeking this relief. On February 4, 2015, the Single Justice (Duffly, J.) denied the petition on the ground that since the trial judge had not denied the Commonwealth's motion the Commonwealth had "not thereby been precluded from introducing evidence of the armed home invasion." Judgment at 4.

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<sup>3</sup> Commonwealth's Answer to Defendant's Motion to Identify Independent Felonious Assault, ¶1. (Dkt. Entry 133, Add. 11)

<sup>4</sup> Commonwealth's Amended Answer to Defendant's Motion to Identify Independent Felonious Assault. (Dkt. Entry 164, Add. 13)

At the second trial, which began on February 3, 2015, the Commonwealth proceeded on the first degree murder indictment on theories of deliberate premeditation and felony murder based on the predicate felonies of armed home invasion and attempted armed robbery. Defendant's motion to bar a retrial on the theory of deliberate premeditation, on the ground that there had been insufficient evidence of deliberate premeditation at defendant's first trial and his retrial on that theory would violate double jeopardy, was denied.

The Commonwealth introduced the same evidence as it did at the first trial, with the exception of the statement of co-defendant Scott which was inadmissible against defendant. Vernon Newberry, who admitted his complicity in the planned robbery and was granted immunity, was the only witness who implicated defendant. All of the testimony of the other witnesses was identical to their testimony in the first trial and all of the physical and documentary evidence was the same. The second trial lasted eight days and at the close of the evidence the trial judge effectively granted defendant's motions for required findings of not guilty on the theory of deliberate premeditation because of



insufficient evidence of intent, and on the theory of felony murder based on the predicate felony of armed home invasion because there was insufficient evidence that the assault causing the victim's death was separate and distinct from the assault that was an element of armed home invasion. He submitted the case to the jury on a theory of first degree felony murder based on the predicate felonies of attempted armed robbery and attempted unarmed robbery.<sup>5</sup>

On February 13, 2015, the jury returned a verdict of not guilty, and defendant was discharged on the murder indictment. He remains in custody, however, on his conviction for armed assault with intent to rob on which his appeal in SJC No. 11097 is still pending.

Immediately following defendant's acquittal, the Commonwealth again moved to enter a conviction and to sentence defendant on the dismissed armed home invasion indictment, but the trial judge refused to entertain the motion. On March 30, 2015, the Commonwealth filed its Renewed Motion to Reinstate Defendant's Conviction For Armed Home Invasion. It argued that defendant's prior conviction of armed home invasion had been dismissed

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<sup>5</sup> The judge also instructed on second degree felony murder based on the predicate felony of illegal possession of a firearm.

after his conviction of felony murder in the first trial only because it had merged with the murder conviction and was therefore duplicative, but now that he had been acquitted of murder there was no merger and the conviction should be reinstated.

On June 9, 2015, the judge who had presided at the first trial (Chin, J.) reinstated defendant's armed home invasion conviction on the ground that "[t]he armed home invasion conviction is no longer duplicative because Resende ultimately was acquitted of felony murder."

(Dkt. Entry 207, Add. 25) On June 29, 2015, Judge Chin sentenced defendant on the armed home invasion conviction to 20 years to 20 years and a day, to run concurrently with defendant's 18-20 year sentence for armed assault with intent to rob.

On April 6, 2015, defendant filed a Motion for Release from Unlawful Restraint pursuant to Mass. R. Crim. P. Rule 30(a) on the ground that his acquittal at his second trial of felony murder based on the predicate felony of attempted armed robbery required, under double jeopardy principles, that his prior conviction of the equivalent offense of armed assault with intent to rob be vacated. In his Memorandum and Order of June 9, 2015, Judge Chin denied this motion on the ground that he

could not logically conclude that "the second jury found insufficient evidence to convict [defendant] of the underlying felony of armed assault with intent to rob or otherwise found him not guilty of that crime." (Dkt. Entry 207, Add. 22)

On June 29, 2015, defendant filed notices of appeal to the Appeals Court from Judge Chin's June 9, 2015 order reinstating defendant's armed home invasion conviction and denying his Rule 30(a) motion for release from unlawful restraint. This appeal was docketed in the Appeals Court on October 2, 2015, as No. 2015-P-1348.

#### **FACTS RELEVANT TO THE APPEAL**

The relevant facts, based on the testimony and exhibits at the first trial, are as follows: Vernon Newberry testified, pursuant to a grant of immunity, that defendant asked him if he knew of someone who would help defendant commit a robbery at a residence in Brockton where there was money and drugs. Tr. 5/19/10, 3:169. Newberry then contacted co-defendant Kenston Scott, who said he would do the "stick-up." Id. 3:173. On the night of Thursday, November 16, 2006, Newberry, Scott, defendant and his brother, and a person by the name of Eric Davis, known as "E," allegedly met together

at a home in Brockton to plan the robbery. Id. 3:174-177. According to Newberry, they all left the house later that night or early the next morning. Scott and "E" drove together in one vehicle, defendant and his brother in another, and Newberry in a third. Id. 3:177. On the way to the victim's residence, Newberry stopped in a parking lot of a housing project to wait, and the two other vehicles continued in the direction of 405 Plain Street, Brockton, which was the residence of Nelson Pina, his girlfriend, Julia Codling, and their 11 year-old son. Id. 3:180.

Julia Codling was the only witness to testify as to the circumstances surrounding the fatal shooting of Nelson Pina in the early morning hours of November 17, 2006. She testified that she and Pina had been awakened when their doorbell rang between 12 and 1 A.M. Id. 3:102. When she and Pina went to the front door, a person she saw through the window, and who she later identified as Scott, said that his car had broken down and asked if he could use the telephone to call AAA for assistance. Id. 3:107-108; Tr. 5/24/10, 2:176. Pina went to the basement to get their pit bull for protection and told Codling to go back to the bedroom. Tr. 5/19/10, 3:112. When she looked out the window from

the bedroom she saw an automobile with its hood raised and its hazard lights flashing parked in front of the house, and she saw Scott walking down the steps of their house talking on their cordless phone. Id. 3:113-115. Codling saw another person, who she did not identify, get out of the driver's side of the vehicle, put on a black hoodie, and open the trunk of the car and look inside. Id. 3:116. She heard Scott say "He's here" to the other person and then walk back up the steps to the front door. Id. 3:119. At this point, Codling left the window and started to run to the front door. Before she arrived, however, she heard a struggle that sounded as if Pina was trying to close the door and Scott was trying to push his way in, followed immediately by four gunshots. Id. 3:121-122. She did not see what happened. She hid, called 911, and remained hidden until the police arrived. Id. 3:124.

Pina was found lying on the floor in the kitchen area. Tr. 5/20/10, 4:185. He died as a result of a single gunshot wound from a .32 cal. semi-automatic pistol that pierced his heart and both lungs. Tr. 5/21/10, 5:24. Shell casings from the pistol were found near Pina's body. Tr. 5/20/10, 4:183, 185. A .357 cal.

revolver from which one round had been fired was found on the floor between Pina's legs. Id. 4:169.

### **ISSUES OF LAW RAISED BY THE APPEAL**

1. Whether the indictment for armed home invasion, which had been dismissed as a duplicative after defendant's first trial at which he was convicted of felony murder based on the predicate felony of armed home invasion, can be reinstated and a sentence imposed after being granted a new trial and being acquitted of felony murder based on the predicate felony of armed home invasion at the second trial.

2. Whether defendant's acquittal of felony murder based on the predicate felony of attempted armed robbery at a second trial requires that his conviction at his first trial of the equivalent offense of armed assault with intent to rob be vacated, when the evidence presented at the second trial was identical to the evidence presented at the first trial.

### **ARGUMENT**

**1. The trial court violated defendant's right not to be placed in jeopardy twice for the same crime when it entered a conviction for armed home invasion after defendant was acquitted of felony murder based on that predicate felony.**

It is well settled that the law does "not

consider the crime generally described as felony murder as a separate offense distinct from its various elements." Illinois v. Vitale, 447 U.S. 410, 420-21 (1980). This is so because the predicate felony includes "all elements of which had been proved in the murder prosecution." Id. Thus, "the underlying felony, whatever it may be, is always a lesser included offense" of the murder charge. Commonwealth v. Gunter, 427 Mass. 259, 275-76 (1998). In the present case, even though defendant was found guilty on separate indictments for murder and for the armed home invasion, he was legally convicted only of the single crime of felony murder, which included the elements of armed home invasion and a homicide committed in its course. As a result, the separate guilty verdict on the armed home invasion indictment "must be dismissed as a matter of law." Commonwealth v. Rivera, 464 Mass. 56, 81 (2013).

When defendant was granted a new trial on the murder indictment, the Commonwealth was entitled to retry him on all the elements of felony murder, including the elements of the lesser included predicate felony of armed home invasion, on the theory of "continuing jeopardy." See Price v. Georgia, 398

U.S. 323, 326 (1970). "The continuing jeopardy principle necessarily is applicable" where defendant "sought and obtained the reversal of his initial conviction[,] and therefore "no aspect of the bar on double jeopardy prevented his retrial for that crime." Id. at 326-27 (emphasis added). Thus, when the Commonwealth proceeded against defendant at the second trial on a theory of felony murder-armed home invasion, it was able to do so because defendant was in "continuing jeopardy" on that crime.

At the close of the evidence at the second trial, the trial judge (Hely, J.) effectively entered a required finding of not guilty of felony murder-armed home invasion when he found that there was insufficient evidence to submit that theory to the jury. At that point, defendant's jeopardy terminated with finality on the charge of felony murder-armed home invasion because the "acquittal was final and could not be reviewed, on error or otherwise, without putting the defendant twice in jeopardy, and thereby violating the Constitution." United States v. Ball, 163 U.S. 662, 671 (1896).

After this acquittal, the subsequent entry of a conviction and the imposition of a sentence on the



armed home invasion indictment clearly ran afoul of the fundamental double jeopardy guarantee of "finality for the defendant's benefit[.]" United States v. Jorn, 400 U.S. 470, 479 (1971). "[T]he primary purpose of the Double Jeopardy Clause was to protect the integrity of a final judgment[,]" United States v. Scott, 437 U.S. 82, 92 (1978), so that "[w]hen an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties[.]" Commonwealth v. Woods, 414 Mass. 343, 353 (1993). Thus, defendant's acquittal barred the imposition of a sentence for armed home invasion because "[a]cquittals, unlike convictions, terminate the initial jeopardy." Justices of Boston Municipal Court v. Lydon, 466 U.S. 294, 308 (1984).

**2. Defendant is currently incarcerated for a crime for which he was acquitted in violation of his right to be free from double jeopardy.**

At defendant's first trial, he was convicted, in addition to felony murder-armed home invasion, of armed assault with intent to rob and sentenced to 18-20 years imprisonment. This conviction was not affected when defendant was granted a new trial on the felony murder-armed home invasion conviction, and an

appeal from it (SJC No. 11097) is still pending in this Court. However, at defendant's second trial the Commonwealth chose to also retry defendant for felony murder based on the predicate felony of attempted armed robbery, which is the equivalent of armed assault with intent to rob.<sup>6</sup> See Commonwealth v. Benitez, 464 Mass. 686, 694 n.12 (2013) ("armed assault with intent to rob is equivalent to an attempted commission of armed robbery").

The Supreme Court has "formulated a concept of continuing jeopardy that has application where criminal proceedings against an accused have not run their full course." Price v. Georgia, 398 U.S. at 326. Thus, where a defendant has sought and obtained a reversal of a prior conviction, his jeopardy is said to be continuing and his retrial on that offense is not barred by double jeopardy. For that reason, when defendant in the present case obtained a new trial for felony murder, his jeopardy on that particular offense

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<sup>6</sup> The Commonwealth's decision to proceed against defendant for felony murder-attempted armed robbery was a strategic decision to avoid the felony murder merger issue that was present where the predicate felony was armed home invasion. See Commonwealth v. Christian, 430 Mass. 552, 557 (2000) (the merger analysis of the felony-murder rule does not apply to armed robbery).

continued.

However, when the Commonwealth chose to retry defendant for felony murder based on the predicate felony of attempted armed robbery, it effectively reopened defendant's conviction of armed assault with intent to rob. In so doing, it should be deemed to have waived the finality of the judgment of that conviction and to have placed defendant in continuing jeopardy on that offense. For the same reason that a reversal of a conviction at the instance of the defendant results in continuing jeopardy, so, too, should the decision to retry the defendant on a conviction that was final result in continuing jeopardy. When that jeopardy was terminated, with finality in an acquittal, the Commonwealth should be estopped from relying on a conviction which it chose to reopen, since a "[a] party is bound by a verdict rendered on a ground on which he chooses to rest his case." Dalton v. Post Pub. Co., 328 Mass. 595, 599 (1952). Defendant's acquittal of felony murder-attempted armed robbery, therefore, terminated his jeopardy on that offense and his prior conviction for the lesser included offense of armed assault with intent to rob should be vacated.

Where, as in the present case, a defendant has been acquitted of an offense (as the lesser included offense of felony murder) for which he was previously convicted, the question of which result is entitled to finality is essentially one of fairness. It cannot, and should not, be decided on the basis of the technicality of which prosecution came first. This Court recently admonished that a "hypertechnical application of the collateral estoppel doctrine[,] " would offend the "significance of being treated 'legally innocent' that results when the prosecution fails to prove a defendant guilty beyond a reasonable doubt, and notions of fairness and finality." Commonwealth v. Dorazio, SJC No. 11765, slip op. at 22-23 (Sept. 2, 2015).

In balancing the "amalgam of interests," such as "fairness to society" and "lack of finality," implicated by the Double Jeopardy Clause, see Price v. Georgia, 398 U.S. at 329, n.4, the equities clearly favor a determination that defendant's acquittal be given finality and that his prior conviction be vacated. Society's interest in seeing that justice is done is fully satisfied by the fact that defendant was found not guilty after a full and fair trial at which

the Commonwealth mustered all of its resources and presented all of its evidence. The "basic premise of the criminal law is that ambiguities and doubts are to be resolved in favor of the accused" is applicable here. Commonwealth v. Hrycenko, 417 Mass. 309, 320 (1994). The fact that a jury unanimously found that defendant was not guilty of felony murder based on the predicate felony of attempted armed robbery clearly raises, at the very minimum, a reasonable doubt of his guilt of the predicate felony for which he should get the benefit.

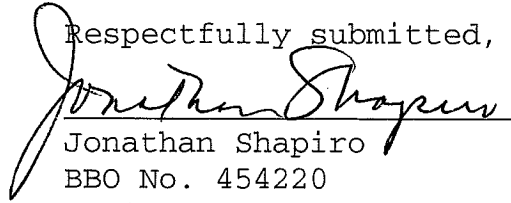
The Commonwealth cannot have its cake and eat it too. It could have taken the chance of retrying defendant for felony murder solely on the basis of the armed home invasion predicate felony where there was a serious question as to whether the Commonwealth could prove that the homicidal assault was separate and distinct from the assault that is an element of armed home invasion. Instead, it chose to proceed in addition on what it thought was the stronger case of attempted armed robbery as the predicate felony. The Commonwealth should be bound by the choice it made, and the finality of the jury's verdict of acquittal on the attempted armed robbery predicate requires that

defendant's prior conviction of the equivalent offense of armed assault with intent to rob be vacated.

**REASONS WHY DIRECT APPELLATE REVIEW IS APPROPRIATE**

This case presents questions of first impression involving the intersection of the protections of the Double Jeopardy Clause of the Fifth Amendment and the felony murder doctrine. Where, as in the present case, the defendant has been granted a new trial after his conviction for felony murder, there is no precedent for how to treat his separate conviction for the predicate felony at the retrial. Similarly, there is no precedent for determining how the defendant's acquittal of felony murder based upon a predicate felony for which the defendant had been previously convicted affects that prior conviction. These questions involve the important policies underlying the Double Jeopardy Clause of insuring finality, preventing the accused from being subjected to the burdens of two trials, and denying the prosecution multiple opportunities to secure a conviction. In this case, it also involves the fundamental unfairness of imprisoning a person after a unanimous jury has found he was not guilty of the very same offense for which he is being imprisoned.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Jonathan Shapiro", is written over a horizontal line.

Jonathan Shapiro

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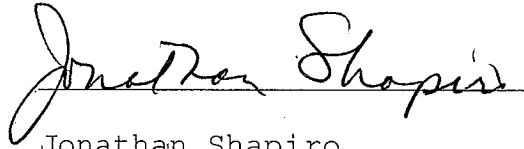
617-742-5800





CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing document on the Commonwealth by mailing a copy of same, U.S. postage prepaid, to Timothy J. Cruz, District Attorney, 32 Belmont Street, P.O. Box 1665, Brockton, MA 02303.

A handwritten signature in cursive script, reading "Jonathan Shapiro", written over a horizontal line.

Jonathan Shapiro

Dated: October 22, 2015



# **ADDENDUM**



**0783CR00511 Commonwealth vs. Resende, Jaime**

Case Type Indictment  
 Status Date: 06/30/2015  
 Case Judge:  
 Next Event:

Case Status Open  
 File Date 09/21/2007  
 DCM Track: C - Most Complex

All Information Party Charge Event Tickler Docket Disposition

**Docket Information**

Docket Date	Docket Text	File Ref Nbr.
09/21/2007	Indictment returned	1
09/21/2007	Notice & copy of indictment & entry on docket sent to Sheriff	2
09/21/2007	Notice & copy of indictment sent to Chief Justice & Atty General	3
10/04/2007	Return of service of certified copy of indictment to defendant	4
10/15/2007	Def't arraigned before Court	
10/15/2007	RE Offense 1:Plea of not guilty	
10/15/2007	RE Offense 2:Plea of not guilty	
10/15/2007	RE Offense 3:Plea of not guilty	
10/15/2007	Assigned to track "C" see scheduling order	
10/15/2007	Scheduling order pursuant to standing order 2-86 amended.	5
10/15/2007	Special mittimus, held without bail without prejudice.	7
10/15/2007	Appearance of Robinson for the defendant.	6
10/15/2007	Case continued to November 15, 2007 for a pre-trial conference. (Grabau, J.) T. Meany, court reporter	
10/15/2007	Case continued to April 14, 2008 for a pre-trial hearing. (Grabau, J.) T. Meany, court reporter	
10/22/2007	Special mittimus on indictment returned without service	
10/30/2007	Appearance of Def't's Atty: Frank H Spillane	8
11/02/2007	Appearance of Commonwealth's Atty: Daniel J Hourihan	9
11/05/2007	MOTION by Def't. to withdraw	10
11/15/2007	Case continued to December 19, 2007 for discovery compliance (Walkew, J.) T. Meany, court reporter	
11/15/2007	Pre-trial conference report filed	11
12/19/2007	Case continued to January 16, 2008 by agreement for motion re; DNA (Walker, J.) T. Meany court reporter	
12/19/2007	Defendant's MOTION (P#10) for leave to withdraw, allowed (Walker, J.) Copies mailed 1/8/2008	
01/09/2008	Commonwealth's MOTION for compelled submission of defendant's DNA	12
01/15/2008	Defendant's MOTION for disclosure of promises, inducements and rewards	13
01/15/2008	Defendant's MOTION for discovery of exculpatory evidence: any and all inconsistent statements made by Commonwealth witnesses	14
01/15/2008	Defendant's MOTION for disclosure of prior and subsequent bad acts	15

Docket Date	Docket Text	File Ref Nbr.
01/15/2008	Defendant's MOTION for bill of particulars	16
01/15/2008	Defendant's MOTION for any phone records	17
01/15/2008	Defendant's MOTION for discovery of prospective expert testimony, physical evidence, medical evidence and scientific and forensic tests	18
01/15/2008	Defendant's MOTION to obtain criminal records	19
01/16/2008	MOTION #12 Deft's motion for compelled submission of deft's DNA: Upon hearing Allowed ([Locke,J]). Copies mailed January 17,2008	
01/16/2008	MOTION #13 Deft's motion for disclosure of promises, inducements and rewards:Allowed by agreement (Locke,JJ). Copies mailed January 17,2008	
01/16/2008	MOTION #14 Deft's motion for discovery of exculpatory evidence: any and all inconsistent statements made by Commonwealth's witnesses; Allowed ([Locke,JJ]). Copies mailed January 17,2008	
01/16/2008	MOTION #15 Deft's motion for disclosure of prior and subsequent bad acts; Allowed by agreement- 60 days prior to trial([Locke,JJ]). Copies mailed January 17,2008	
01/16/2008	MOTION #16 Deft's motion for bill of particulars: After hearing Allowed as to time,place, manner and means only([Locke,JJ]). Copies mailed January 17,2008	
01/16/2008	MOTION #17 Deft's motion for any and phone records; Allowed as to records in Commonwealth's possession or to be used at trial([Locke,JJ]). Copies mailed January 17,2008	
01/16/2008	MOTION #18 Deft's motion for discovery of prospective expert testimony, physical evidence, medical evidence and scientific and forensic tests; Allowed by agreement([Locke,JJ]). Copies mailed January 17,2008	
01/16/2008	MOTION #19 Deft's motion to obtain criminal records: Allowed ([Locke,JJ]). Copies mailed January 17,2008	
01/16/2008	ORDER for deft's DNA(Locke,J.)	20
01/16/2008	Case continued to February 27,2008 by agreement for status re: DNA (Locke,J.) N.Gagnon court reporter	
01/18/2008	Defendant's MOTION to dismiss for abuse of grand jury proceedings	21
02/26/2008	Habeas corpus for Deft at Norfolk House of Correction (Dedham) to appear February 27, 2008 @ Brockton	22
02/27/2008	Commonwealth's motion in opposition to defendant's motion to dismiss	23
02/27/2008	Case continued to April 2, 2008 for motion to dismiss (Chin, J.) T. Meany, court reporter	
04/02/2008	Case continued to April 11, 2008 for motion to dismiss (per D.A.)	
04/02/2008	Habeas corpus for Deft at Norfolk HOC to appear in Brockton on April 11, 2008 at 9:00 am	24
04/11/2008	Hearing on (P#21) Defendant Jaime Resende's motion to dismiss for abuse of grand jury proceedings held, matter taken under advisement (Troy, J)	
04/16/2008	MOTION (P#21) Defendant Jaime Resende's motion to dismiss for abuse of grand jury proceedings denied (See Pleading) (Paul E. Troy, Justice).	
05/27/2008	Habeas corpus for Deft at Norfolk House of Correction (Dedham) to appear May 29, 2008 @ Brockton	25
05/28/2008	Habeas corpus for Deft at Suffolk County Jail (Nashua Street) to appear May 29, 2008 @ Brockton	26
05/29/2008	Defendant's oral motion for reduction of bail DENIED (Troy, J)	

Docket Date	Docket Text	File Ref Nbr.
05/29/2008	Case continued to June 25, 2008 by agreement for motions (Troy, J) C Richards, court reporter	
06/23/2008	Habeas corpus for Deft at Suffolk County Jail (Nashua Street) to appear June 25, 2008 @ Brockton	27
06/25/2008	MOTION by Commonwealth for Court order directing Massachusetts State Police crime laboratory to proceed with exhaustive DNA testing	28
06/25/2008	Case continued by agreement to July 23, 2008 for DNA motion (Troy, J.) N. Gagnon, court reporter	
07/17/2008	Commonwealth's motion to continue motion hearing date (see #07-162)	
07/17/2008	Defendant's MOTION (P#33- 07-00163, allowed after review (Joseph M. Walker III, Justice). Copies mailed 7/18/2008	
07/17/2008	Case continued at request of Commonwealth to July 29, 2008 for motion/DNA (Walker, J.) T. Meany, court reporter	
07/21/2008	Habeas corpus for Deft at Suffolk County Jail (Nashua Street) to appear July 29, 2008 @ Brockton	29
07/23/2008	MOTION by Deft. to suppress identification	30
07/28/2008	Commonwealth's DNA affidavit (see P#33.1 in 07-00162)	
07/29/2008	Case continued by agreement to September 2, 2008 for DNA motion (Walker, J.) T. Meany, court reporter	
07/30/2008	MOTION by Deft. for funds to retain an expert witness, filed and allowed in the amount of \$1,500.00 (Walker, J.)	31
08/29/2008	Habeas corpus for Deft at Suffolk County Jail (Nashua Street) to appear in Brockton on September 2, 2008 at 9:00 am	32
09/02/2008	Case continued by agreement to September 19, 2008 for DNA motion (Locke, J.) T. Meany, court reporter	
09/08/2008	Habeas corpus for Deft at Suffolk County Jail (Nashua Street) to appear September 19, 2008 @ Brockton	33
09/19/2008	Commonwealth's MOTION (P#28) for Court Order directing Mass State Police crim Lab to proceed with exhaustive DNA Testing, allowed after hearing, testing is not to commence before 10/24/08; counsel for the co-defendants may file requests, if any, for financial assistance re:expert presence during exhaustive DNA testing (Joseph M. Walker III, Justice). Copies mailed 9/23/2008	
09/19/2008	ORDERED: authorizing Mass State Police Crime Lab to proceed with exhaustive DNA testing. Stayed until October 24, 2008 (Joseph M. Walker III, Justice)	34
09/19/2008	Case continued by agreement to October 24, 2008 for motion to suppress (Walker, J.) T. Meany, court reporter	
10/07/2008	Habeas corpus for Deft at Suffolk County Jail (Nashua Street) to appear October 24, 2008 @ Brockton	35
10/24/2008	Case continued by agreement to December 17, 2008 for motion to suppress (Locke, J.) M. Laplante, court reporter	
12/09/2008	Habeas corpus for Deft at Suffolk County Jail (Nashua Street) to appear December 17, 2008 @ Brockton	36
12/17/2008	Case continued by agreement to January 17, 2009 for motion to suppress (Locke, J.) N. Gagnon, court reporter	
01/05/2009	Habeas corpus for Deft at Suffolk County Jail (Nashua Street) to appear January 7, 2009 @ Brockton	37
01/07/2009	Defendant's motion (P#30) to suppress identification, matter taken under advisement (Locke, J.)	

Docket Date	Docket Text	File Ref Nbr.
01/07/2009	MOTION by Commonwealth in opposition to defendant's motion to suppress identification	38
01/07/2009	Case continued by agreement to February 4, 2009 for status (Locke, J.) N. Gagnon, court reporter	
01/12/2009	Defendant's MOTION (P#30) to suppress identification. After hearing, denied (see Memorandum of Decision) (Jeffrey A. Locke, Justice). Copies mailed 1/12/09	
01/12/2009	MEMORANDUM of Decision and Order on defendant's motion to suppress identification, denied (Locke, J.)	39
01/27/2009	Habeas corpus for Deft at Suffolk County Jail (Nashua Street) to appear February 4, 2009 @ Brockton	40
02/04/2009	Case continued by agreement to March 13, 2009 for status (Locke, J.) N. Gagnon, court reporter	
03/09/2009	Habeas corpus for Deft at Suffolk House of Correction (South Bay) to appear 3/13/09 at Brockton	41
03/13/2009	Case continued by agreement to April 30, 2009 for status (defts. appearance waived) (Locke, J.) N. Gagnon, court reporter	
04/14/2009	Case continued by agreement to April 30, 2009 for status of DNA (J. Walsh, AC/M) R. Griffin, court reporter	
04/17/2009	Habeas corpus for Deft at Suffolk County Jail (Nashua Street) to appear April 30, 2009 @ Brockton	42
04/30/2009	Case continued by agreement to May 27, 2009 for status and trial assignment (Gershengorn, J.) B. St. Charles, court reporter	
05/19/2009	Habeas corpus for Deft at Suffolk County Jail (Nashua Street) to appear May 27, 2009 @ Brockton	43
05/27/2009	Case continued by agreement to June 24, 2009 for trial assignment (J. Walsh, AC/M) R. Griffin, court reporter	
06/18/2009	Habeas corpus for Deft at Suffolk County Jail (Nashua Street) to appear June 24, 2009 @ Brockton	44
06/24/2009	Case continued by agreement to July 28, 2009 for status (Gershengorn, J.) R. Griffin, court reporter	
07/22/2009	Habeas corpus for Deft at Suffolk County Jail (Nashua Street) to appear July 28, 2009 @ Brockton	45
07/28/2009	Case continued to September 10, 2009 for status and trial assignment (Dortch-Okara, J.) N. Gagnon court reporter	
08/31/2009	Habeas corpus for Deft at Suffolk County Jail (Nashua Street) to appear September 10, 2009 @ Brockton	46
09/10/2009	MOTION by Deft. to sever	47
09/10/2009	Case continued by agreement to October 6, 2009 for status re:co-defts. motion to suppress (defts. presence waived) (Walker, J.) R. Griffin, court reporter	
10/06/2009	Case continued by agreement to November 12, 2009 for status (bring in deft.) (Connors, J.) R. Griffin, court reporter	
10/15/2009	Habeas corpus for Deft at Suffolk County Jail (Nashua Street) to appear November 12, 2009 @ Brockton	48
11/12/2009	Case continued by agreement to November 24, 2009 for status (Connors, J.) A. McDonald, court reporter	
11/19/2009	Habeas corpus for Deft at Suffolk County Jail (Nashua Street) to appear November 24, 2009 @ Brockton	49



Docket Date	Docket Text	File Ref Nbr.
11/24/2009	Notice of trial assignment for the third criminal session (Connors, J.)	50
11/24/2009	Case continued by agreement to February 10, 2010 for final pre trial conference (Connors, J.) R. Griffin, court reporter	
11/24/2009	Notice sent to counsel that a final pre trial conference has been scheduled in the third session on February 10, 2010	51
11/24/2009	Case continued by agreement to March 8, 2010 for trial in the third criminal session on March 8, 2010 (Connors, J.) R. Griffin, court reporter	
11/24/2009	Notice sent to counsel that a trial has been scheduled in the third criminal session on March 8, 2010	52
01/06/2010	Pursuant to the Order of Locke, J case transferred to the 2nd session for trial March 8, 2010 (Locke, J.)	
02/01/2010	Habeas corpus for Deft at Suffolk County Jail (Nashua Street) to appear February 10, 2010 @ Brockton	53
02/09/2010	Case continued to February 18, 2010 by agreement for final pre trial conference (Chin, J.)	
02/16/2010	Defendant's MOTION in limine to exclude evidence derived from the Fusion Center and incorporated memorandum in support	54
02/16/2010	Defendant's MOTION for discovery regarding Daubert hearing	55
02/18/2010	Case continued to April 1, 2010 for motion to sever (Chin, J.) T. Meany court reporter	
02/18/2010	Case continued to May 17, 2010 for trial in second criminal session (Chin, J.) T. Meany court reporter	
02/19/2010	Notice sent to counsel about motion to sever scheduled for April 1, 2010 in second criminal session	56
02/19/2010	Notice sent to counsel about trial scheduled for May 17, 2010 in second criminal session	57
04/01/2010	Commonwealth's motion to join defendants' indictments for trial; filed and allowed (Chin, J.) (see 07-00162)	
04/01/2010	Defendant's motion to sever: Denied (See #47) (Chin, J.)	
04/01/2010	Case continued to May 3, 2010 for final pre-trial conference (Chin, J.) N. Gagnon, court reporter	
04/02/2010	Notice sent to appear for Final Pre Trial Conference on 5/3/2010	58
05/03/2010	Appearance of Commonwealth's Atty: Peter Maguire co counsel (see 07-162)	
05/03/2010	Filed: Joint Pre-Trial Memorandum (see 07-00162)	
05/03/2010	Commonwealth files list of potential witnesses (see 07-00162)	
05/03/2010	Commonwealth files proposed statement of facts (see 07-00162)	
05/03/2010	Case continued to May 12, 2010 for motions (Chin, J.) T. Meany, court reporter	
05/03/2010	Case continued to May 17, 2010 for trial (Chin, J.) T. Meany, court reporter	
05/12/2010	Case continued to May 14, 2010 for motion (Brendan Sullivan Asst. Clerk)	
05/13/2010	Commonwealth files application for grant of immunity for Vernon Newbury (see original #85 in 07-00162)	

Docket Date	Docket Text	File Ref Nbr.
05/13/2010	Commonwealth files petition for grant of immunity for Vernon Newbury(see original #86 in 07-00162)	
05/13/2010	ORDER of immunity for Vernon Newbury(Chin,J.) (see original #87 in 07-00162)	
05/13/2010	After hearing defendant recognize for his appearance on May 18,2010	
05/14/2010	Commonwealth's motion to exempt family members of victim and certain investigating officers from general order of sequestration; After hearing Allowed as to Julia Codling, Allowed to Lt Coppenrath, However Lt Coppenrath may not sit at counsel table (Chin,J) T. Meany, court reporter (See #90 , case # 07-00162)	
05/17/2010	Commonwealth files list of potential witnesses (See 07-00162)	
05/17/2010	Commonwealth files petition for grant of immunity for Tiffany Hill (see 07-00162)	
05/17/2010	MOTION by Commonwealth: to permitted to use certain exhibits and chalks during opening statement (see #94, on co-deft 07-00162) (Chin,J) T. Meany, court reporter	
05/17/2010	MOTION by Commonwealth:in limine regarding demonstrative charts and diagrams (see 07-00162)	
05/18/2010	Commonwealth's petition for grant of immunity for Tiffany Hill; Allowed (Chin,J) (see #97, 07-00162)	
05/18/2010	ORDER: of Immunity for Tiffany Hill (Chin,J) (See #98, co-deft 07-00162)	
05/18/2010	Impanelment of jurors begins on this date May 18,2010)	
05/19/2010	Jury of 16 members impaneled (See #99, co-deft 07-00162)	
05/20/2010	Trial continues before Chin,J and Jury (Chin,J) T. Meany, court reporter	
05/21/2010	Trial continues before Chin,J and Jury (Chin,J) T. Meany, court reporter	
05/24/2010	Trial continues before Chin,J and Jury (Chin,J) J. Russo, court reporter	
05/25/2010	Commonwealth files proposed jury instructions (see #100, co-deft-07-00162)	
05/25/2010	Commonwealth files request for jury instructions (see #101, co-deft-07-00162)	
05/25/2010	MOTION by Deft: for a required finding of not guilty at the close of the commonwealth's case; Denied (Chin,J) J. Russo, court reporter	59
05/26/2010	Trial continues before Chin,J and Jury (Chin,J) J.Russo, court reporter	
05/27/2010	RE Offense 1:Guilty verdict Murder 1st degree	60
05/27/2010	RE Offense 2:Guilty verdict	61
05/27/2010	RE Offense 3:Guilty verdict	62
05/27/2010	Commonwealth's oral motion to dismiss Offense # 002; Allowed by order of the Court and with the consent of the defendant (Chin,J)	
05/27/2010	RE Offense 2:Dismissed by order of the court with the consent of the defendant (Chin,J)	
05/27/2010	Defendant sentenced to Offense # 001: Life , MCI Cedar Junction (629 days credit) Offense #003: 18-20 years, MCI Cedar Junction , concurrent with offense # 001 (Chin,J)	
05/27/2010	Notified of right of appeal under Rule 65	63

Docket Date	Docket Text	File Ref Nbr.
05/27/2010	RE Offense # 003: Notified of right of appeal under Rule 64	
05/27/2010	Victim-witness fee assessed: \$90.00 (Richard J. Chin, Justice)	
05/27/2010	RE Offense # 001: Warrant for commitment with Assessment	64
05/27/2010	RE Offense # 001: Corrected warrant for commitment with assessment issued (Chin,J)	65
05/27/2010	RE Offense # 003: Warrant for commitment (Chin,J)	66
06/01/2010	Court Reporter Santos, Kathryn (per diem) is hereby notified to prepare one copy of the transcript of the evidence of 04/11/2008	67
06/01/2010	Court Reporter Gagnon, Nicole is hereby notified to prepare one copy of the transcript of the evidence of 01/07/2009	68
06/01/2010	Court Reporter Meany, Thomas F. is hereby notified to prepare one copy of the transcript of the evidence of May, 13, 14, 17,18,19, 20 & 21, 2010 (see 07-00162)	
06/01/2010	Court Reporter Russo, John is hereby notified to prepare one copy of the transcript of the evidence of May, 24,25 & 26, 2010 (See 07-00162)	
06/01/2010	Court Reporter Crandell, Kim is hereby notified to prepare one copy of the transcript of the evidence of 05/27/2010 (see 07-00162)	
06/01/2010	RE Offense # 003: Notice of appeal from sentence to Cedar Junction MCI (Walpole) filed by Jaime Resende	69
06/02/2010	Attorney Spillane's motion to withdraw as counsel	70
06/02/2010	RE Offense # 001 & 003: NOTICE of APPEAL FILED by Jaime Resende	71
06/03/2010	Notice to Justice, DA and defense counsel of defendant's notice of appeal	72
06/03/2010	Letter transmitted to the Appellate Division. All parties notified 6/3/2010	73
06/04/2010	Exhibits#101 & 103 Drugs and scale returned to State Police	
06/07/2010	MOTION#70 Deft's motion to withdraw, Allowed appointment appellate counsel ([Chin,J.]). Copies mailed June 8,2010	
06/07/2010	Notice of assignment of counsel	74
06/17/2010	Transcript of testimony received 1 volumes from court reporter, Santos, Kathryn (per diem)	
06/21/2010	\$90.00 Victim-witness fee paid as assessed	75
07/15/2010	Notice of assignmnet of counsel (CPCS)	76
07/22/2010	Appearance of Deft's Atty: Richard J Shea	77
08/16/2010	Transcript of testimony received 1 volume from Transcript of proceedings from Court Reporter Crandell, Kim	
08/25/2010	Appearance of Deft's Atty: Jonathan Shapiro	78
09/03/2010	Attorney, Richard J Shea's Notice to withdraw as counsel of record for Jaime Resende	79
10/04/2010	Transcript of testimony received 1 volumes from Transcript of proceedings from Court Reporter Gagnon, Nicole	
01/31/2011	2nd Notice to Court reporter T. Meany for transcript	80
01/31/2011	2nd Notice to Court reporter J. Russo for transcript	81
02/08/2011	Transcript of testimony received 1 volumes from Transcript of proceedings from Court Reporter Meany, Thomas F.	

Docket Date	Docket Text	File Ref Nbr.
02/11/2011	Transcript of testimony received 1 Cd ( 4 volumes) from Transcript of proceedings from Court Reporter Shari Remer for J. Russo	
02/24/2011	Transcript of testimony received 1 volumes from Transcript of proceedings from Court Reporter Meany, Thomas F.	
03/14/2011	Transcript of testimony received 2 volumes from Transcript of proceedings from Court Reporter Meany, Thomas F.	
06/17/2011	Order (Appellate Division): that the judgment imposing said sentence stand and that said appeal be and is hereby dismissed	82
08/29/2011	Defendant's EX-PARTE MOTION for funds for trial transcript	83
08/31/2011	Notice to Justice Chin, DA and Defense Counsel about deft's ex-parte motion for funds for trial transcript	84
09/13/2011	Habeas corpus for Deft at Cedar Junction MCI (Walpole) to appear in Brockton on 9/15/11	85
09/15/2011	MOTION#83 Deft's ex-parte motion for funds for trial transcript; Denied without prejudice to review(Walker,J.)(Walker,J.). Copies mailed September 19,2011	
09/23/2011	Defendant's RENEWED EX-PARTE MOTION for funds for trial transcripts	86
09/27/2011	Defendant's RENEWED EX-PARTE MOTION for funds for trial transcripts : after review of this written motion , which provides some information regarding transcript costs, the court will allow funds for trial transcripts preparation in an amount not to exceed \$2500.00 (Walker,J)	
09/30/2011	Transcript of testimony received 2 volumes from Transcript of proceedings from Court Reporter Meany, Thomas F.	
10/04/2011	Notice sent to attorneys that transcripts are available.	87
10/14/2011	Clerk's certificate that defense counsel has received copy of transcript at atty's request & expense	88
11/18/2011	Two (2) certified copies of docket entries, original and copy of transcript, two (2) copies of exhibit list and list of documents, and copy of the notice of appeal, each transmitted to clerk of appellate court.	89
11/18/2011	Notice of completion of assembly of record sent to clerk of SJC and attorneys for the Commonwealth and defendant.	90
01/04/2012	Court Reporter Gagnon, Nicole is hereby notified to prepare one copy of the transcript of the evidence of 4/1/2010 (see 07-00162)	
01/04/2012	Transcript of testimony received 1 volumes from Transcript of proceedings from Court Reporter Gagnon, Nicole (Mailed to Counsel & SJC)	
01/08/2012	Clerk's certificate that DA has received copy of transcript (see 07-00162)	
06/06/2012	ORDER(SJC) Upon consideration of the defendant's motion for new trial filed pursuant to GL c 278 s 33E, it is Ordered that appellate proceedings in this case be, and hereby are, stayed pending the disposition of the defendant's motion for new trial. It is further Ordered that the defendant's motion for new trial be, and hereby is, remanded for disposition to the Plymouth Division, case PLCR2007-00511 & PLCR2007-00162, Superior Court Department of the Trial Court ent; June 5,2012	91
06/06/2012	Defendant's MOTION for new trial (given to Judge Chin)	92
06/21/2012	MOTION#92 Deft's motion for a new trial; Commonwealth may have until August 3,2012 to file written opposition (Chin,J.) copies mailed June 21,2012	

Docket Date	Docket Text	File Ref Nbr.
07/16/2012	ORDER:(SJC) Status Letter from Jonathan Shapiro, Esq . Further status report due in 30 days : ent: 7/9/12	93
08/17/2012	Defendants' MOTION for scheduling order (see original in co-deft 07-00162 pld#134)	
08/21/2012	Notice to Justice Chin, DA and Defense Counsel about defendants' motion for scheduling order	94
08/28/2012	Commonwealth's motion to enlarge time to file and opposition to defendant's motion for a new trial; filed and allowed (Chin,j) (see co-defendant 07-00162)	
09/17/2012	Commonwealth's memorandum in opposition to defendants' motions for post conviction relief.	95
11/29/2012	Notice to counsel of hearing on defendant's motion for post conviction relief schedule for 12/12/12 at 2PM in Plymouth before Justice Chin	96
12/06/2012	Habeas corpus for Deft at Souza-Baranowski Correctional Center to appear December 12,2012 @ Plymouth	96.1
12/12/2012	After hearing case continued to January 16, 2013 in the 2nd criminal session at 2:00 PM for further hearing (Chin,J ) A. McDonald, court reporter	
12/12/2012	ORDER(SJC) December 10, 2012 Revised motion for new trial filed for Jaime Resende by Jonathan Shapiro, Esq ent:12/10/12	97
12/12/2012	ORDER: Revised Motion for New Trial is remanded to Plymouth Superior (Brockton).	98
12/12/2012	Deft files reply brief	99
12/12/2012	Defendant's revised motion for a new trial	100
12/14/2012	Habeas corpus for Deft at Souza-Baranowski Correctional Center to appear in Brockton on 1/16/13	101
01/16/2013	Defendants motion for discovery filed and after hearing motion ALLOWED to the extent that the Commonwealth turn over written document files pertaining to Eric Davis (Chin, J)cc: 3/12/13	102
01/16/2013	Commonwealth files memorandum in opposition to defendants motion for post conviction discovery	103
01/16/2013	Case continued to March 13, 2013 @ 2:00 by agreement for status (Chin, J)	
01/16/2013	Notice sent to appear for status on March 13, 2013 @ 2:00 in the 2nd session	104
03/06/2013	Habeas corpus for Deft at Souza-Baranowski Correctional Center to appear March 13,2013 @ Brockton	105
03/13/2013	Defendant brought into court	
03/13/2013	Case called for status of discovery before (Chin,J)	
03/13/2013	After hearing case continued to April 1, 2013 by agreement for evidentiary hearing on motion off new trial (Chin,J) C. Johnson, court reporter	
03/14/2013	Habeas corpus for Deft at Souza-Baranowski Correctional Center to appear April 1,2013 @ Brockton	106
03/14/2013	Habeas corpus for witness Eric Davis @ Nashua St to appear April 1,2013 @ Brockton	107
04/01/2013	Notice of Appointment of Counsel for witness Eric Davis (see orig in 07-162 #145)	

Docket Date	Docket Text	File Ref Nbr.
04/01/2013	Case continued to April 5, 2013 for futher motion hearing (Chin,J) N. Gagnon, court reporter	
04/01/2013	Habeas corpus for Deft at Souza-Baranowski Correctional Center to appear April 5, 2013 @ Brockton	108
04/01/2013	After hearing on defendant's motion for a new trial , continued to April 5, 2013 for further hearing (Chin,J) N. Gagnon, court reporter	
04/01/2013	Commonwealth files additional memorandum in opposition to defendant's motions for post conviction relief (see 07-00162)	
04/05/2013	Hearing on defendant's motion for a new trial held, matter taken under advisement (Richard J Chin, Justice)	
06/04/2013	Defendant's revised motion for a new trial; Allowed, with resepect to the felony murder convictions see findings of fact (Chin,J)	
06/04/2013	RE Offense 1:Active	
06/04/2013	Findings of fact rulings of law and order on defendant Kenston Scott's motion for post conviction relief; and defendant Jaime Resende's revised motion for a new trial (Chin,J)	109
06/28/2013	RE Offense #'s 003:NOTICE of APPEAL from denial of motion for new trial FILED by Jaime Resende	109.5
07/03/2013	Court Reporter McDonald, Ann Marie is hereby notified to prepare one copy of the transcript of the evidence of 12/12/2012	110
07/03/2013	Court Reporter Gagnon, Nicole is hereby notified to prepare one copy of the transcript of the evidence of 01/16/2013	111
07/03/2013	Court Reporter Johnson, Caryn is hereby notified to prepare one copy of the transcript of the evidence of 03/13/2013	112
07/03/2013	Court Reporter Gagnon, Nicole is hereby notified to prepare one copy of the transcript of the evidence of 04/01/2013	113
07/03/2013	Court Reporter Gagnon, Nicole is hereby notified to prepare one copy of the transcript of the evidence of 04/05/2013	114
07/03/2013	Notice to Justice, DA and defense counsel of defendant's notice of appeal	115
08/30/2013	ORDER(SJC):re: July 18,2013-Status Letter from Jonathan Shapiro Esquire: see letter on file(noted: further status report due in 30 days)ent: August 28,2013	116
09/03/2013	Transcript of testimony received volumes 1 from Transcript of proceedings from Court Reporter Gagnon, Nicole	
09/03/2013	Transcript of testimony received volumes #1 Transcript of proceedings from Court Reporter Gagnon, Nicole	
09/06/2013	ORDER(SJC) Re: August 30, 2013 Status Letter from Jonathan Shapiro Esquire: see letter on file(Noted further status report due in 30 days )ent: August 30,2013	117
09/30/2013	Transcript of testimony received volumes #1 from Transcript of proceedings from Court Reporter Gagnon, Nicole	
10/03/2013	Transcript of testimony received volumes # 1 from Transcript of proceedings from Court Reporter McDonald, Ann Marie	
11/04/2013	Transcript of testimony received volume #1 from Transcript of proceedings from Court Reporter Johnson, Caryn	
11/12/2013	Notice of completion of assembly of record sent to clerk of SJC and attorneys for the Commonwealth and defendant.	118
11/12/2013	Notice of assembly of record; mailed to S.J.C. per Rule 9(d)	119
11/12/2013	Trans. mailed to defense counsel	

Docket Date	Docket Text	File Ref Nbr.
11/20/2013	MOTION by Deft: for determination of indigency	120
11/22/2013	Defendant's MOTION for determination of indigency ALLOWED. Indigency established (Chin, J.)	
01/06/2014	MOTION by Deft: for scheduling order	120.1
01/29/2014	ORDER: (SJC) January 6, 2014- Motion for withdrawal of appeal of Jonathan Shapiro, Esq. for Jaime Resende. (Allowed, the appeal of Jaime Resende only is withdrawn.) ent. 1/27/14	121
02/03/2014	Notice of assignment of counsel (CPCS)	122
04/14/2014	Habeas corpus for Deft at MCI Shirley to appear in Brockton on April 16, 2014	123
04/16/2014	Continued to 4/30/2014 for Status (Moriarty, J) R. Griffin CR	
04/18/2014	Habeas corpus for Deft at Shirley MCI to appear in Brockton on 4/30/14	124
04/30/2014	Case continued to May 15, 2014, at request of Deft for status. (Moriarty, J) R. Griffin, Court Reporter.	
05/05/2014	ORDER (SJC) April 28, 2014-Motion to extend to 6/30/2014 filing of brief of commonwealth by Mary E Lee ADA(Allowed to June 29, 2014) ent: May 1, 2014	125
05/14/2014	Habeas corpus for Deft at Shirley MCI to appear May 15, 2014 @ Brockton	126
05/15/2014	Case continued to June 25, 2014 by agreement for status and filing motion(Moriarty,J) R Griffin court reporter	
05/15/2014	Defendant's MOTION for funds for investigator; Filed and Allowed (Moriarty,J) copies mailed May 19, 2014	127
06/03/2014	Appearance of Deft's Atty: Harley C Racer	128
06/12/2014	MOTION by Deft: for discovery	130
06/12/2014	MOTION by Deft: for order directing the commonwealth to identify an independant felonious assault to establish felony murder.	131
06/13/2014	Habeas corpus for Deft at Shirley MCI to appear June 25, 2014 @ Brockton	129
06/25/2014	Defendant's motion for discovery; allowed (Moriarty,J)	
06/25/2014	Case continued to August 20, 2014 by agreement for discovery compliance and status (Moriarty,J) R. Griffin, court reporter	
06/25/2014	Defendant's motion for order directing the Commonwealth to identify an independant felonious assault to establish felony-murder; allowed (Moriarty,J)	
06/26/2014	Habeas corpus for Deft at MCI Shirley to appear in Brockton on 8/20/14	132
08/20/2014	Commonwealth files answer to defendants motion to identify independant felonious assault	133
08/20/2014	Notice sent to appear for Final Pre Trial Conference on 1/5/2015	134
08/20/2014	Notice sent to counsel and D.A re: Trial on January 12, 2015 in the 2nd criminal session	135
08/20/2014	Case assigned to the second criminal session for Trial on January 12, 2015 and Final Pre-Trial Conference on January 5, 2015. (Ullmann, J.) R. Griffin, court reporter.	
09/15/2014	EX-Parte MOTION by Deft: for additional funds for an investigator	136
10/20/2014	MOTION by Deft: to compel production of discovery	137
10/20/2014	Deft's motion to dismiss indictment of First degree Murder	138
10/24/2014	Habeas corpus for Deft at MCI Shirley to appear in Brockton on 11/6/14	139

Docket Date	Docket Text	File Ref Nbr.
11/06/2014	Hearing on Defendant's motion to dismiss held, matter taken under advisement (Cannone, Justice)	
11/06/2014	Case continued to November 20, 2014 by agreement for motion to dismiss (Cannone,J) R. Griffin, court reporter	
11/06/2014	Commonwealth files memorandum in opposition to defendant's motion to dismiss	139.1
11/17/2014	Habeas corpus for Deft at MCI Norfolk to appear in Brockton on November 20, 2014	140
11/20/2014	Case continued to December 17, 2014 by agreement for status (Cannone,J)	
11/21/2014	Defendant's MOTION for revised motion for a new trial	141.1
12/16/2014	Habeas corpus for Deft at MCI Shirley to appear December 17, 2014 in Brockton	141
12/17/2014	Appearance of Commonwealth's Atty: Jessica Healy	142
12/17/2014	Commonwealths motion to continue	143
12/17/2014	Case continued to December 22, 2014 by agreement for status and motion to continue (Cannone, J) R. Griffin, court reporter	
12/19/2014	Habeas corpus for Deft at Shirley MCI to appear on 12/22/14 @ Brockton	144
12/22/2014	Pursuant to the order of Gaizano,J this matter is continued in the fourth criminal session to February 2, 2015 for pre-trial motions and February 3, 2015 for trial, final pre-trial conference January 26, 2015 (Leo P Foley Asst Clerk/Magistrate)	
12/23/2014	Notice sent to counsel final pre-trial conference scheduled for January 26, 2015 fourth criminal session	145
12/23/2014	Notice sent to counsel about pre-trial motions scheduled for February 2, 2015 fourth criminal session	146
12/23/2014	Notice sent to counsel about trial scheduled for February 3, 2015 fourth criminal session	147
12/29/2014	MOTION#138 Deft's motion to dismiss indictment of first degree murder; Denied (see memo and decision) ([Cannone,J). Copies mailed December 30, 2014	
12/29/2014	MEMORANDUM OF DECISION & ORDER: on deft's motion to dismiss indictment of first degree murder ; Denied ([Cannone,J)copies mailed December 30, 2014	148
01/13/2015	Assented MOTION by Deft: for order directing probation department to provide witness CORIS: allowed except as to 4 who will not be called without prejudice. (Moriarty, J.)	149
01/13/2015	Ex-Parte MOTION by Deft: for funds for expert witness: filed and allowed. (Moriarty, J.)	150
01/13/2015	MOTION by Deft: for discovery: filed and Commonwealth agrees to provide the above subject to the amendments. (Moriarty, J.)	151
01/16/2015	Habeas corpus for Deft at Shirley MCI to appear on 1/26/15 @ Brockton	152
01/20/2015	MOTION by Deft: for attorney-conducted voir dire	153
01/20/2015	MOTION by Deft: to dismiss indictment of first degree murder	154
01/20/2015	MOTION by Deft: to continue	154.1
01/22/2015	MEMORANDUM & ORDER: on motion to continue the trial 1/22/2015, (Charles J. Hely, Justice)	154.2
01/26/2015	Case called before (Hely, J) on motion to dismiss	
01/26/2015	Defendant's presence waived by defense counsel	



Docket Date	Docket Text	File Ref Nbr.
01/26/2015	P(#154)Defendant's motion to dismiss indictment for first degree murder Denied after hearing (Hely, J)	
01/26/2015	Appearance of Commonwealth's Atty: E Russell Eonas	155
01/26/2015	Commonwealths motion to return trial exhibits filed and Allowed (Hely, J)	156
01/26/2015	Defendants oral motion to obtain Cori records of Commonwealth witness Gwen Leatherwood Allowed (Hely, J)	
01/26/2015	Commonwealths motion in limine requesting the defendant provide notice of a affirmative defenses: filed and Allowed, Defense counsel reports no affirmative defenses (Hely, J)	157
01/26/2015	Joint pre trial memorandum filed (not signed by defense)	158
01/26/2015	Commonwealths proposed statemnets of facts	159
01/26/2015	Commonwealth list of potential witnesses	160
01/26/2015	Joint pre trial memoarndum (not signed by Commonwealth)	161
01/26/2015	Defendants ex parte motion for additional funds for an investigattor filed and Allowed (Hely, J)	162
01/26/2015	Commonwealths Amended answer to defendants motion to identify independant felonious assaults	164
01/26/2015	Commonwealths motion to exempt witness from sequestration order filed	165
01/26/2015	Commonwealths notice of witness Laura Bryant	166
01/26/2015	Commonwealths motion in limine regarding demonstrative charts and diagrams	167
01/26/2015	Commonwealths motion for a view	168
01/26/2015	Defendant's motion in line to exclude chart generated by fusion center	170
01/26/2015	Defendants motion in limine to exc;lude testimony related to inconclusive DNA Result	171
01/26/2015	Commonwealths motion in limine regarding photograph of victim while alive	169
01/26/2015	Defendants motion in limine to exclude statemnets of co defendant Kenston Scott	172
01/26/2015	Defendants mtoion in limine to bar any reference to the fact that defendant was previously tried and convicted	173
01/26/2015	Case continued to February 3, 2015 for trial (Hely, J) J. Russo, court reporter	
01/26/2015	All remaining Exhibits except for #'s 78,16,30,29,109,79,77,76, and 75 returned to ADA Jessica Healy	154.3
01/29/2015	Commonwealth's MOTION to reinstate the defendant's conviction for armed robbery home invasion and admit the convictions substantively at the retrial of the murder indictment	174
01/30/2015	Habeas corpus for Deft at Shirley MCI to appear February 3,2015 @ Brockton	175
01/30/2015	Habeas corpus for Deft at Shirley MCI to appear February 2, 2015 @ Brockton	176
02/02/2015	Deft files memornadum of law re: Reinstatement of conviction	177
02/02/2015	Deft files opposition to commonwealth's motion to reinstate the defendant's conviction for armed home invasion and to admit the conviction substantively at the retrial of the murder indictment	178

Docket Date	Docket Text	File Ref Nbr.
02/02/2015	MOTION by Deft: for attorney conducted voir dire	179
02/02/2015	Habeas corpus for Deft at MCI Shirley to appear in Brockton on 2/3/15	180
02/03/2015	Case called for trial before Hely, J.	
02/03/2015	Appearance of Commonwealth's Atty: Jason Thomas	181
02/03/2015	Impanelment of jurors begins	
02/03/2015	Defendant ordered remanded to the Sheriff of the Plymouth County House of Corrections	
02/03/2015	Warrant for remand issued (Hely, J.) J. Russo, court reporter	182
02/04/2015	Capias issued against Jason Sheehan	183
02/04/2015	Trial continues before Hely, J.	
02/04/2015	Jury of 15 members impanelled and sworn (Hely, J.) J. Russo, court reporter.	
02/04/2015	Commonwealth's oral motion for capias to issue for witness J. Sheehan	
02/05/2015	Capias issued against Tiffany Hill	184
02/05/2015	Trial continues before Hely, J. and jurors	
02/05/2015	Defendant brought into court	
02/05/2015	Capias returned as to Jason Sheehan with service (Hely, J.) J. Russo, court reporter.	186
02/05/2015	MOTION by Commonwealth: in limine to limit impeachment evidence by means of prior conviction	185
02/05/2015	Commonwealth's oral motion for capias to issue for witness T. Hill.	
02/06/2015	Defendant brought into court	
02/06/2015	Trial continues before Hely, J. and jurors (Hely, J.) J. Russo, court reporter.	
02/09/2015	Court closed due to inclement weather	
02/10/2015	ORDER(SJC)Upon consideration it is ORDERED that the Commonwealth's petition for extraordinary relief under GLc211 sec3 shall be and hereby is DENIED ent; February 4,2015 (Hely, J.) J. Russo, court reporter.	187
02/10/2015	Defendant brought into court	
02/10/2015	Trial continues before Hely, J. and jurors	
02/11/2015	Trial continues before Hely, J. and jurors	
02/11/2015	MOTION by Deft: for required finding of not guilty at the close of the Commonwealth's evidence: filed and denied (Hely, J.)	188
02/11/2015	MOTION by Deft: for required finding of not guilty at the close of all the evidence: filed and denied (Hely, J.)	189
02/11/2015	MOTION by Deft: for proposed jury instructions (Hely, J.) J. Russo, court reporter.	190
02/12/2015	Trial continues before Hely, J. and jurors (Hely, J.) J. Russo, court reporter.	
02/13/2015	Trial continues before Hely, J. and jurors.	
02/13/2015	RE Offense 1:Not guilty verdict	191
02/13/2015	Defendant discharged re: offense #001 (Hely, J.) J. Russo, court reporter	
02/13/2015	CORRECTED warrant for commitment issued re: offense #003	192

Docket Date	Docket Text	File Ref Nbr.
03/02/2015	Notice of assignment of counsel	193
03/27/2015	ORDER on vacated sentence (Hely,J) copy faxed Date Comp Unit	194
03/30/2015	Commonwealth's RENEWED MOTION to reinstate the defendant's conviction for armed home invasion(case given to Judge Chin)	195
04/02/2015	Notice sent of Hearing in 2nd Session on 5/6/15 on Motions.	196
04/06/2015	Defendant's MOTION for release from unlawful restraint	197
04/08/2015	Defendant's EX-PARTE MOTION for funds for trial transcripts(case given to Judge Chin)	198
04/13/2015	Defendant's EX-PARTE MOTION for funds for trial transcripts; Allowed (Chin,J)	
04/27/2015	Deft files opposition to commonwealth's renewed motion to reinstate defendant's conviction for armed home invasion	199
05/01/2015	Appearance of Commonwealth's Atty: Mary E Lee	200
05/01/2015	Commonwealth files memorandum in opposition to the defendant's motion for release from unlawful restraint	201
05/04/2015	Notice sent of Motion Hearing from 5/15/15 to 5/18/15.	202
05/15/2015	Habeas corpus for Deft at Cedar Junction MCI (Walpole) to appear May 18, 2015 @ Brockton	203
05/18/2015	Habeas corpus for Deft at Shirley MCI to appear on 5/22/15 @ Brockton	204
05/21/2015	Habeas corpus for Deft at Shirley MCI to appear on 5/28/15 @ Brockton	205
05/28/2015	Defendant brought into court.	
05/28/2015	Hearing before Chin, J. on P.#195 Commonwealth's renewed Motion To Reinstate Deft.'s Conviction For Armed Home Invasion. Motion Taken Under Advisement. (Chin, J. ), B. St.Charles.	
06/01/2015	Ex Parte Motion Of Deft. For Funds For Hearing Transcript Filed and Allowed. (Chin, J.).	206
06/09/2015	Defendant's motion for release from unlawful restarint; Denied ,see memorandum of decision (Chin,J)	
06/09/2015	Commonwealth's RENEWED MOTION to reinstate the defendant's conviction for armed home invasion; Allowed, see memorandum of decision (Chin,J)	
06/09/2015	Memorandum of decision and order on defendant's motion for release from unlawful restraint and Commonwealth's renewed motion to reinstate the defendant's conviction for armed home invasion (Chin,J)	207
06/11/2015	Notice to counsel of re-sentencing hearing scheduled for June 29, 2015 in the 2nd criminal session	208
06/16/2015	Habeas corpus for Deft at MCI Shirley to appear in Brockton on 6/29/15	209
06/29/2015	Defendant brought into court re: offense 002 re-sentencing before Judge Chin	
06/29/2015	After hearing the Court vacates dismissal of offense # 002, the jury having returned a verdict of guilty on 5/27/10 (Chin,J)	
06/29/2015	RE Offense 002 :Defendant sentenced to 20 yrs and 20 yrs & 1 day MCI Cedar Junction, concurrent with sentence imposed on offense # 003, nunc pro tunc to 5/27/10 (11 days credit)	
06/29/2015	RE Offense # 002; Warrant for commitment issued	210
06/29/2015	NOTICE of APPEAL from denial of defendant's motion for release from unlawful restraint FILED by Jaime Resende	211
06/29/2015	NOTICE of APPEAL from conviction and sentence FILED by Jaime Resende	212

Docket Date	Docket Text	File Ref Nbr.
06/29/2015	Letter transmitted to the Appellate Division. All parties notified 6/30/2015	213
06/29/2015	Notice to DA and defense counsel of defendant's notices of appeals (2)	214
06/30/2015	Court Reporter St. Charles, Barbara is hereby notified to prepare one copy of the transcript of the evidence of 05/28/2015 & 6/29/15	215
08/20/2015	Defendant's EX PARTE Motion for funds for trial transcripts (case given to Judge Chin)	216
08/24/2015	Endorsement on Motion for funds for trial transcript, (#216.0): ALLOWED (Chin,J) copies mailed August 24,2015	
08/25/2015	Transcript received 2 volumes from B. StCharles	
09/29/2015	Appeal: notice of assembly of record	217
09/29/2015	Notice to Clerk of the Appeals Court of Assembly of Record	218
	Applies To: Lee, Esq., Mary (Attorney) on behalf of Commonwealth (Prosecutor); Racer, Esq., Harley Clarke (Attorney) on behalf of Resende, Jaime (Defendant)	
10/14/2015	Notice of Entry of appeal received from the Appeals Court	219

Rec'd (201)  
6-9-15

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss.

SUPERIOR COURT  
PLCR2007-00511

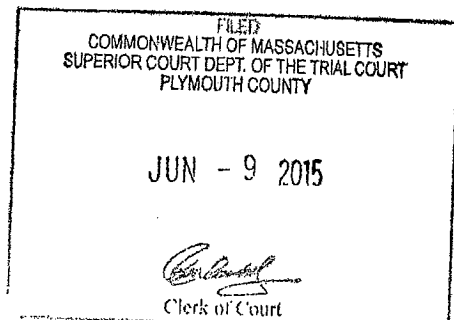
COMMONWEALTH

vs.

JAIME RESENDE

MEMORANDUM OF DECISION AND ORDER ON  
DEFENDANT'S MOTION FOR RELEASE FROM  
UNLAWFUL RESTRAINT AND COMMONWEALTH'S  
RENEWED MOTION TO REINSTATE THE DEFENDANT'S  
CONVICTION FOR ARMED HOME INVASION

On May 27, 2010, defendant Jaime Resende was convicted of first degree murder in violation of G.L. c. 265, § 1; armed home invasion in violation of G.L. c. 265, § 18C; and armed assault with intent to rob in violation of G.L. c. 265, § 18(b), arising from the shooting of a drug dealer during an attempted armed robbery. After this Court granted Resende a new trial on the murder indictment only, he was acquitted of that charge at a second jury trial. This matter is now before the Court on Defendant's Motion For Release From Unlawful Restraint. Also before the Court is the Commonwealth's Renewed Motion to Reinstate the Defendant's Conviction For Armed Home Invasion. For the reasons discussed below, the defendant's motion is DENIED and the Commonwealth's motion is ALLOWED.



cc. JH  
JS  
6-10-15

## BACKGROUND

The verdict slip submitted to the jury at Resende's first trial contained a box for murder by premeditation and a box for first degree felony murder, with separate boxes for armed home invasion and armed robbery as the predicate felonies. On May 27, 2010, the jury found Resende guilty of armed home invasion, armed assault with intent to rob, and felony-murder premised on the felony of armed home invasion. This Court (Chin, J.) dismissed the armed home invasion indictment as having merged into the murder conviction, and sentenced Resende to life in prison on the murder conviction and 18 to 20 years in prison on the armed assault with intent to rob conviction. On June 4, 2013, this Court allowed Resende's motion for a new trial on the murder indictment on the ground that the failure to give a felony murder merger instruction created a substantial likelihood of a miscarriage of justice. Resende then withdrew his direct appeal.

Prior to the retrial, the Commonwealth indicated its intent to allege attempted armed robbery as the felony underlying the murder indictment.<sup>1</sup> On October 20, 2014, Resende filed a motion to dismiss the murder indictment on the ground that prosecution for felony murder based on armed robbery would violate the Double Jeopardy Clause because he had already been convicted of the lesser included offense of armed assault with intent to rob. This Court (Cannone, J.) denied that motion on December 29, 2014 on the grounds that double jeopardy does not bar a second trial which results from the defendant's successful motion for a new trial, and the verdict in the first trial did not constitute an implied acquittal of felony murder predicated on armed robbery.

Nine days prior to the second trial, the Commonwealth announced its intent to proceed with

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<sup>1</sup>The merger doctrine requiring an independent felonious assault does not apply to felony murder based on that predicate offense. See Commonwealth v. Christian, 430 Mass. 552, 556 (2000).

both attempted armed robbery and armed home invasion as predicate felonies. The Commonwealth filed a Motion to Reinstate the Defendant's Conviction For Armed Home Invasion And Admit The Convictions Substantively At the Retrial of the Murder Indictment. Judge Hely declined to rule on that motion, prompting the Commonwealth to file an emergency appeal pursuant to G.L. c. 211, § 3. On February 4, 2015, a single justice of the Supreme Judicial Court (Duffy, J.) denied the petition for extraordinary relief on the ground that the trial judge had not yet denied the motion and the Commonwealth had not been precluded from introducing evidence of the armed home invasion.

The second trial began on February 3, 2015. The Commonwealth introduced the same evidence as at the first trial, except for the co-defendant's statement. At the close of the evidence, on February 11, 2015, this Court (Hely, J.) entered a required finding of not guilty with respect to felony murder predicated on armed home invasion on the ground that there was insufficient evidence that the assault which caused the victim's death was separate and independent from the assault that constituted armed home invasion. On February 13, 2015, the jury returned a not guilty verdict on the felony murder charge. Judge Hely never ruled on the Commonwealth's motion to reinstate the armed home invasion conviction. Resende is currently serving the 18 to 20 year sentence for armed assault with intent to rob.

### DISCUSSION

#### **Defendant's Motion For Release From Unlawful Restraint**

Resende moves pursuant to Mass. R. Crim. P. 30(a) for this Court to vacate his conviction for armed assault with intent to rob and order his release, arguing that his continued confinement violates the Double Jeopardy Clause of the Fifth Amendment. See Commonwealth v. Parrillo, 468

Mass. 318, 320 (2014) (Rule 30(a) is appropriate mechanism by which to challenge constitutionality of sentence). The Fifth Amendment forbids successive prosecution and cumulative punishment for the same offense, including a greater and lesser included offense. Brown v. Ohio, 432 U.S. 161, 165 (1977); Edge v. Commonwealth, 451 Mass. 74, 75 (2008). The Double Jeopardy Clause thus represents a constitutional policy of finality for the defendant's benefit in criminal proceedings. Commonwealth v. Cumming, 466 Mass. 467, 470-471 (2013). See also Morris v. Mathews, 475 U.S. 237, 247 (1986) (Double Jeopardy Clause protects individual from suffering embarrassment, anxiety, and expense of second trial for the same offense).

However, the Double Jeopardy Clause does not prevent a second trial for the same offense when the defendant seeks and obtains the reversal of his initial conviction on appeal or collateral review. Price v. Georgia, 398 U.S. 323, 326 (1970); Commonwealth v. Woods, 414 Mass. 343, 352-353, cert. den., 510 U.S. 815 (1993) (no double jeopardy violation where defendant sought de novo trial because he himself chose to be tried again in the hope of securing acquittals to replace previous convictions). The Double Jeopardy Clause does not relieve a defendant from the consequences of his voluntary choice to invalidate his original conviction or punishment. Commonwealth v. Cumming, 466 Mass. at 471; Jackson v. Commonwealth, 430 Mass. 260, 262 (1999), cert. den., 528 U.S. 1194 (2000). In such a case, the defendant is deemed to be placed in continuing jeopardy for the same offense in a single prosecution because the criminal proceedings have not run their full course. Price v. Georgia, 398 U.S. at 326; Commonwealth v. Woods, 414 Mass. at 352. See also Commonwealth v. Johnson, 426 Mass. 617, 625 (1998) (double jeopardy protection applies only if there has been some event which terminates the original jeopardy). Continuing jeopardy does not apply once there is an acquittal, whether that acquittal is express or implied by conviction of a lesser



included offense when the jury was given a full and fair opportunity to return a verdict on the greater charge. Commonwealth v. Figueroa, 468 Mass. 204, 228 (2014); Commonwealth v. Johnson, 426 Mass. 617, 625 (1998). See also Commonwealth v. Merry, 453 Mass. 653, 600 (2009) (double jeopardy bars new trial if evidence in first trial was legally insufficient to sustain verdict).

Resende contends that he is currently incarcerated for a crime of which he was acquitted in violation of principles of double jeopardy. He argues that by proceeding in the second trial with attempted armed robbery as the predicate for felony murder, the Commonwealth in effect tried him twice for the same crime, trying him for the greater offense of felony murder after he was previously convicted of the lesser included offense.<sup>2</sup> See Morris v. Mathews, 475 U.S. at 244 (prosecution for aggravated murder based on felony of aggravated robbery violated Double Jeopardy Clause where defendant had already been convicted of aggravated robbery); Commonwealth v. Clemmons, 370 Mass. 288, 295 (1976) (general rule is that double jeopardy precludes jury from considering lesser offense in a prosecution for the greater offense where defendant has previously been prosecuted for the lesser offense). Resende argues that by proceeding at the second trial on the felony of attempted armed robbery, the Commonwealth placed him in continuing jeopardy with respect to the lesser included offense of armed assault with intent to rob, waiving the finality of that conviction, such that his acquittal of felony murder at the second trial constitutes, in effect, an acquittal of the predicate felony. Cf. Brown v. Ohio, 432 U.S. at 165 (in context of successive prosecutions, double jeopardy guarantee serves policy of finality for defendant's benefit, protecting him from attempt to re-litigate facts underlying prior acquittal). Accordingly, Resende argues, principles of double jeopardy

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<sup>2</sup>See Commonwealth v. Benitez, 464 Mass. 686, 694 n.12 (2013) (depending on the facts, armed assault with intent to rob is equivalent to attempted armed robbery, and in theoretical sense, armed assault with intent to rob is lesser included offense of every armed robbery).

demand that the conviction of armed assault with intent to rob be vacated.

Foremost, the argument that the Double Jeopardy Clause bars retrial of the felony murder charge with attempted armed robbery as the predicate felony has already been addressed and resolved by Judge Cannone in her December 29, 2014 denial of Resende's motion to dismiss the indictment. This Court perceives no valid reason to revisit that well-reasoned decision. See United States v. Jose, 425 F.3d 1237, 1245 (9th Cir. 2005), cert. den., 547 U.S. 1060 (2006) (where defendant tried in a single prosecution for felony murder and underlying felony and is convicted of both, and murder conviction is reversed on appeal but felony conviction is not, principles of double jeopardy do not bar retrial for felony murder because jeopardy is continuing and court can vacate conviction on lesser included offense if defendant is convicted of murder at retrial).

Further, this Court disagrees that the acquittal of felony murder at the second trial constitutes an implied acquittal of armed robbery and therefore, of the offense of armed assault with intent to rob. This Court cannot logically conclude that in acquitting Resende of felony murder, the second jury found insufficient evidence to convict him of the underlying felony of armed assault with intent to rob or otherwise found him not guilty of that crime. Cf. Commonwealth v. Carlinio, 449 Mass. 71, 77 (2007) (court will not imply acquittal unless conviction of one crime logically excludes guilt of another crime, and jury's failure to check box for felony murder after checking boxes for premeditation and extreme atrocity and cruelty was not acquittal of felony murder which barred retrial on that theory). There are any number of factors unrelated to a defendant's actual guilt that might drive an acquittal, including passion or prejudice, compromise, or mistake. See Commonwealth v. Medeiros, 456 Mass. 52, 57 (2010) (inconsistent verdicts, one of which is acquittal, does not render guilty verdict erroneous even if inconsistency suggests possibility of

compromise by jury). “The interests of justice are not served by entry of an acquittal by accident or supposition.” Commonwealth v. Carlino, 449 Mass. at 80. See also Jones v. Thomas, 491 U.S. 376, 387 (1989) (Double Jeopardy Clause does not exist to provide unjustified windfall to defendant). Accordingly, the first jury’s verdict finding Resende guilty of armed assault with intent to rob must stand.

#### **Commonwealth’s Renewed Motion to Reinstate Conviction For Armed Home Invasion**

The Commonwealth has renewed its motion to reinstate Resende’s conviction for armed home invasion, which was dismissed as duplicative of the initial felony murder conviction. The court may not vacate the dismissal of a criminal complaint and reinstate the charge if to do so would violate principles of double jeopardy. Commonwealth v. Aldrich, 21 Mass. App. Ct. 221, 225-227 (1985), rev. den., 396 Mass. 1105 (1986). Resende contends that the dismissal of the armed home invasion indictment following the first trial terminated his jeopardy on that offense, which cannot be revived following his acquittal of felony murder at the second trial. However, the Commonwealth argues that the armed home invasion conviction was revived by operation of law when this Court vacated the felony murder conviction, such that Resende remained in continuing jeopardy on that charge.

As noted by the Commonwealth, the Supreme Judicial Court has recognized a variety of circumstances in which reinstatement of a dismissed indictment does not violate double jeopardy principles. See Commonwealth v. Wood, 469 Mass. 266, 295 (2014) (armed robbery conviction dismissed as duplicative of felony murder conviction properly reinstated where it was not in fact duplicative because jury also convicted on extreme cruelty or atrocity); Commonwealth v. Rollins,

354 Mass. 630, 632-633 (1968) (district attorney nolle prossed first degree murder charge when defendant pled guilty to second degree murder, but when defendant withdrew his plea, first degree murder charge properly reinstated; jeopardy had not attached because no jury impaneled). Cf. Commonwealth v. Therrien, 383 Mass. 529, 532 (1981) (double jeopardy did not bar Commonwealth from appealing trial court's entry of required finding of not guilty following jury verdict convicting defendant; jury verdict properly reinstated where trial court erred).

The result of Resende's successful motion for a new trial on the felony murder charge was that he remained in continuing jeopardy on both the murder and the lesser felony charges of which he was not acquitted until the resolution of the second trial. See United States v. Jose, 425 F.3d 1237, 1244-1245 (9th Cir. 2005), cert. den., 547 U.S. 1060 (2006) (defendant remains in continuing jeopardy on same offense where his felony murder conviction is reversed on appeal but his underlying felony conviction is not). The principle of continuing jeopardy rests on the interests of fairness to society, lack of finality, and limited waiver. Price v. Georgia, 398 U.S. at 326 n.4. Once Resende elected to seek a new trial for felony murder, he could not have believed that the prior dismissal of the armed home invasion conviction as duplicative of the vacated felony murder conviction was a final termination of the prosecution of that charge. Cf. Commonwealth v. Lam Hue To, 391 Mass. 301, 311 (1984) (Double Jeopardy Clause does not necessarily prevent retrial following dismissal of indictment after jeopardy has attached, where dismissal is not a finding of acquittal); Commonwealth v. Aldrich, 21 Mass. App. Ct. at 225-227 (vacating dismissal of indictment after conviction but before sentencing not barred by double jeopardy where dismissal was caused by prosecutor's stated intent to proceed in Superior Court and defendant could not have reasonably believed that dismissal was final disposition of charge).

The armed home invasion conviction is no longer duplicative because Resende ultimately was acquitted of felony murder. The idea underlying the Double Jeopardy Clause is that “the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty.” Green v. United States, 355 U.S. 184, 187-188 (1957). Reinstating the lesser of two convictions for the same criminal conduct does not implicate these concerns where the lesser conviction was originally dismissed on double jeopardy grounds and the greater conviction is reversed on appeal or collateral review on grounds unrelated to the sufficiency of the evidence.<sup>3</sup> See Rutledge v. United States, 517 U.S. 292, 306 (1996) (endorsing court’s ability to enter verdict on lesser included offense following reversal of conviction of greater offense on grounds affecting only the greater offense); United States v. Jose, 425 F.3d at 1247 (when felony murder conviction is reversed, lesser included felony conviction is in effect reinstated, but if defendant is convicted of felony murder upon retrial, conviction of that underlying felony must be vacated). See also State v. Turner, 238 P.3d 461, 464-466 (Wash. 2010) (collecting cases).

Under the circumstances of this case, Resende is not subject to multiple prosecutions or multiple punishment for the same offense. Reviving the armed home invasion conviction does not violate the Double Jeopardy Clause because it does not give the Commonwealth another opportunity

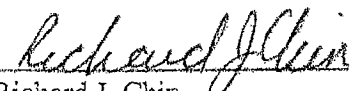
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<sup>3</sup>The acquittal of felony murder at the second trial was not an acquittal of armed home invasion because the elements of that felony never reached the jury. Judge Hely entered a required finding of not guilty on that theory of felony murder due to the Commonwealth’s inability to prove an independent felonious assault, not its inability to prove the elements of the underlying felony.

to marshal its resources to prove that crime against Resende; rather, it merely reinstates the jury's original guilty verdict for sentencing. The fact that Resende was re-prosecuted and acquitted of felony murder based on armed home invasion does not change the analysis because that re-trial occurred at the defendant's behest. See United States v. Scott, 437 U.S. 82, 89 (1978) (defendant who has verdict set aside may be tried anew upon the same indictment or upon another indictment for the same offense of which he had been convicted); United States v. Jose, 425 F.3d at 1247-1248 (defendant remains in continuing jeopardy where his felony murder conviction is reversed on appeal, and vacated lesser included felony conviction may be reinstated). Accordingly, this Court will reinstate the armed home invasion conviction.

#### ORDER

For the foregoing reasons, it is hereby ORDERED that the Defendant's Motion For Release From Unlawful Restraint be DENIED. It is further ORDERED that the Commonwealth's Renewed Motion to Reinstate the Defendant's Conviction For Armed Home Invasion be ALLOWED.

  
Richard J. Chin  
Justice of the Superior Court

DATED: June 9, 2015